



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED] Office: California Service Center

Date: JAN 24 2003

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT: [REDACTED]

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INSTRUCTIONS:

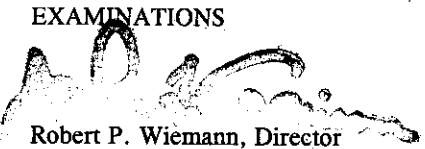
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who was present in the United States without a lawful admission or parole on June 29, 1991. On June 27, 1995, he was served with an Order to Show Cause. On July 27, 1995, an immigration judge ordered the applicant deported *in absentia*, and a Warrant of Deportation was issued on August 28, 1995. The applicant was apprehended, and he was removed from the United States on September 8, 1997. Therefore he is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). In 1998 the applicant was again present in the United States without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). Therefore, he is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II).

The applicant married a native of Guatemala and naturalized U.S. citizen on May 10, 1996 while in deportation proceedings, and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The director determined that the applicant was ineligible for any relief or benefit as he is subject to reinstatement of his prior order of removal pursuant to Section 241(a)(5) of the Act.

On appeal, counsel states that the Service erred in its decision that a July 27, 1995 order of deportation may be reinstated. Counsel asserts that the director abused his discretion in denying the application. Counsel requests an additional 30 days in which to submit a written brief. More than 30 days have elapsed since the appeal was filed on September 20, 2002, and no additional documentation has been received into the record. Therefore, a decision will be entered based on the present record.

In Matter of G-N-C-, 22 I&N Dec. 281 (BIA 1998), the Board of Immigration Appeals addressed the issue of section 241(a)(5) of the Act, and determined that it lacked jurisdiction to review a decision of the Service to reinstate a prior order of removal under that section. The alien in that matter was subject to a previous order of removal entered on January 9, 1986 (the actual date he was admitted to the United States as a nonimmigrant student), and effective on May 29, 1991 (although the final order of deportation was actually entered by the Board on May 8, 1991). The notice indicated that the alien was deported on November 13, 1991, and that he reentered unlawfully in December 1995. The Service issued a Notice of Intent/Decision to Reinstate Prior Order (Form I-862) on May 16, 1997.

Based on the statute at section 241(a)(5) of the Act, and the use of that statute by an immigration judge in the matter discussed in Matter of G-N-C-, the Associate Commissioner determines that the director's decision in this matter is correct.

Section 212(a)(9)(A) of the Act provides, in part, that:

(i) Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 of the Act or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a)(9)(C) of the Act provides that:

(i) Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the

alien's last departure from the United States if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

Pursuant to section 212(a)(9)(C) of the Act, aliens who were unlawfully present in the United States for an aggregate period of more than one year and subsequently departed or who were previously ordered removed (and actually left the United States) and have subsequently either entered the United States without inspection or sought to enter the United States without inspection are inadmissible.

The record reflects that the applicant was removed in September 1997. He reentered the United States without being admitted in 1998. Therefore, the applicant is mandatorily inadmissible because 10 years have not elapsed since his last departure.

Section 241(a)(5) of the Act, 8 U.S.C 1231(a)(5), provides that:

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after reentry.

The applicant is also subject to the provisions of section 241(a)(5) of the Act, and is, therefore, not eligible for any relief under this Act. The appeal will be dismissed.

ORDER: The appeal is dismissed.